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09/855,369	05/15/2001	Douglas M. VanDeRiet	3591-1092	8754

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RICHARD E. STANLEY, JR  
BRINKS HOFER GILSON & LIONE  
P.O. BOX 10395  
CHICAGO, IL 60610

EXAMINER

HARRIS, STEPHANIE N

ART UNIT	PAPER NUMBER
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3636

DATE MAILED: 08/13/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/855,369

Applicant(s)

VANDERIET ET AL.

Examiner

Stephanie N. Harris

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 May 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,6-14,16-18 and 55-69 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,6,7,10,13,14,16 and 55-69 is/are rejected.
- 7) ☒ Claim(s) 8, 9, 11, 12, 17, 18 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 May 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 21.
- 4) ☒ Interview Summary (PTO-413) Paper No(s). 22.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## **DETAILED ACTION**

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the first retaining surface and the second retaining surface must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Specification***

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the terms "first retaining surface" and "second retaining surface".

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 6-14, and 16-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1, it is unclear from the specification and drawings where the first retaining surface and the second retaining surface elements are located with respect to the grasping members., thus rendering the claim indefinite.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 10, 14, 55, 60, 61, and 65 are rejected under 35 U.S.C. 102(b) as being anticipated by Koa (USPN 5067773).

Regarding claim 1, a chair is comprised of a frame (16) having a series of grasping members (51) located around a circumference of the frame and a fabric (12) as seen in Figures 4 and 8. The series of grasping members (52) secure the fabric to the frame as seen in Figure 9. The fabric provides a body support surface as seen in Figure 7. The grasping members are comprised of teeth (52) that extend from the frame as seen in Figure 4.

Each of the teeth comprises an undercut area (located between elements 52 and 38) along an outside of the teeth as seen in Figure 5. The undercut area is defined by a first retaining surface and a second retaining surface. The grasping members (52) serve as the first retaining surface. The second retaining surface (38) overhangs the

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first retaining surface. The fabric comprises holes that the teeth protrude through to secure the fabric to the frame as seen in Figures 5 and 9. A portion of the fabric is disposed under the second retaining surface as seen in Figure 9.

Regarding claim 10, the frame comprises a retention slot (50) that is comprised of a hole that is larger than a head of a pin and a second hole that is smaller than the head (Col. 3, lines 55-56).

Regarding claims 14 and 61, the frame further comprises a raised ridge (44) that is disposed along an inner circumference of the series of grasping members and a recessed channel (located between elements (52 and 46) is disposed between the raised ridge and the series of grasping members that extends to the base of the grasping members as seen in Figures 5 and 9.

Regarding claims 55, 60, and 65 Koa discloses a body support structure with a frame (16) that has a first, body facing side facing a first direction and a second side facing a second direction opposite the first direction as seen in Figure 4. The frame has a body-facing surface with an outer and inner periphery defining an opening as seen in Figure 4. The frame comprises a plurality of grasping members (52) that extend from the first, body-facing side of the frame in the first direction as seen in Figure 4. A cushion with a flexible fabric (12) engages the plurality of grasping members as seen in Figure 9. The fabric covers a portion of the body-facing surface of the frame as seen in Figure 8. The grasping members extend through the fabric as seen in Figure 9.

Claims 55, 60, and 65 are rejected under 35 U.S.C. 102(b) as being anticipated by Yang (USPN 5503455).

Regarding claims 55, 60, and 65 Yang discloses a body support structure with a frame (10) that has a first, body facing side facing a first direction and a second side facing a second direction opposite the first direction as seen in Figure 2. The frame has a body-facing surface with an outer and inner periphery defining an opening as seen in Figure 2. The frame comprises a plurality of grasping members (11) that extend from the first, body-facing side of the frame in the first direction as seen in Figure 3. A flexible fabric (20) engages the plurality of grasping members as seen in Figure 2. The fabric covers a portion of the body-facing surface of the frame as seen in Figure 1. The grasping members extend through the fabric as seen in Figure 3.

Claims 55, 60, 61, and 65 are rejected under 35 U.S.C. 102(b) as being anticipated by Kindig et al. (USPN 5015034).

Regarding claims 55, 60, and 65 Kindig discloses a body support structure with a frame (50) that has a first, body facing side facing a first direction and a second side facing a second direction opposite the first direction as seen in Figure 7. The frame has a body-facing surface with an outer and inner periphery defining an opening as seen in Figure 7. The frame comprises a plurality of grasping members (51) that extend from the first, body-facing side of the frame in the first direction as seen in Figure 6. A flexible fabric (40) engages the plurality of grasping members as seen in Figure 6. The fabric

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covers a portion of the body-facing surface of the frame as seen in Figure 6. The grasping members extend through the fabric as seen in Figure 6.

Regarding claim 61, the frame further comprises a raised ridge (56) that is disposed along an inner circumference of the plurality of grasping members (51) and a recessed channel (50) that is disposed between the raised ridge and the plurality of grasping members that extends to a base of the grasping members as seen in Figure 8.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Koa.

Koa has been described above. Koa shows all of the teachings of the claimed invention but fails to positively recite the use of a tinnerman nut. It would have been an obvious matter of design choice to use a tinnerman nut, since applicant has not disclosed that the use of a tinnerman nut solves any stated problem or is for any particular purpose and it appears that the invention would perform equally as well with another type of nut.

Claims 56-59, 62-64, and 66-69 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kindig et al. in view of McLarty, III et al. (USPN 5632526).

Kindig has been described above noting figures 6-8. Kindig shows all of the teachings of the claimed invention but fails to show the use of a knit fabric with interlocked threads.

Regarding claims 56, 62, 67, McLarty discloses the flexible fabric is a knit fabric with interlocked threads (Abstract) as seen in Figure 7. Regarding claims 57, 63, 66, the flexible fabric can be comprised of lateral elastomer threads and longitudinal polyester threads (Col. 1, lines 31-42).

It would have been obvious to one having skill in the art at the time the invention was made to modify the fabric of Kindig with the knit fabric with interlocked threads, as shown by McLarty, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ416.

Regarding claims 59, 64, 69 Kindig discloses a cover (30) that is installed and receives the frame (50) as seen in Figure 6. The cover (30) is over the grasping members (51), when received by frame (50) as seen in Figure 6.

Claims 56, 57, 66, 67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yang in view of McLarty, III et al. (USPN 5632526).



Yang has been described above noting figures 6-8. Yang shows all of the teachings of the claimed invention but fails to show the use of a knit fabric with interlocked threads.

Regarding claims 56, 62, 67, McLarty discloses the flexible fabric is a knit fabric with interlocked threads (Abstract) as seen in Figure 7. Regarding claims 57, 63, 66, the flexible fabric can be comprised of lateral elastomer threads and longitudinal polyester threads (Col. 1, lines 31-42).

It would have been obvious to one having skill in the art at the time the invention was made to modify the fabric of Yang with the knit fabric with interlocked threads, as shown by McLarty, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ416.

Claims 6, 7, 16, 56, 57, 58, 62, 63, 66, 67, and 68 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koa in view of McLarty, III et al. (USPN 5632526).

Koa has been described above noting figures 4-9. Koa shows all of the teachings of the claimed invention but fails to show the use of a knit fabric with interlocked threads.

Regarding claims 56, 62, 67, McLarty discloses the flexible fabric is a knit fabric with interlocked threads (Abstract) as seen in Figure 7. Regarding claims 57, 63, 66, the flexible fabric can be comprised of lateral elastomer threads and longitudinal polyester threads (Col. 1, lines 31-42).

It would have been obvious to one having skill in the art at the time the invention was made to modify the fabric of Koa with the knit fabric with interlocked threads, as shown by McLarty, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ416.

### ***Allowable Subject Matter***

Claims 8, 9, 11, 12, 17, and 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 8, 9, 11, 12, 17, and 18 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1, 6-14, and 16-18 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following patents are cited to further show the state of the art

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with respect to chair frames: US005352022A to Knoblock, US005333934A to Knoblock, US006485103B1 to Yamada et al., US005113913A to Graf, US006543099B1 to Fillion et al., US006588073B1 to Zoromski et al., US005967614A to Schmidt, U.S. Pat. No. 2159383 to Jones, U.S. Pat. No. 2390751 to Tinnerman, U.S. Pat. No. 3036572 to Castelli et al., USPN 6315364 to Fujita et al., USPN 2864438 to Levine, and U.S. Pat. No. 5003664 to Wong.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephanie N. Harris whose telephone number is 703-305-1838. The examiner can normally be reached on Monday-Friday from 9am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Cuomo, can be reached on (703) 308-0827. The fax phone number for the organization where this application or proceeding is assigned is 703-305-7687.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

SNH

August 10, 2003

  
Peter M. Cuomo  
Supervisory Patent Examiner  
Technology Center 3600